

Senate Bill No. 636

Passed the Senate August 25, 2014

Secretary of the Senate

Passed the Assembly August 22, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1701.2 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, Hill. Public Utilities Commission: proceedings.

(1) Existing law establishes certain procedures that are applicable to adjudication, rulemaking, and ratesetting cases of the Public Utilities Commission.

This bill would prohibit an officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case from participating in the decision of the case or in the decision of any factually related adjudicatory proceeding. The bill would permit an officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case to participate in reaching a settlement of the case, but would prohibit the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.

(2) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process, and to establish rules for all public utilities.

This bill would correct certain statutory references from the commission adopting regulations to the commission adopting rules.

The people of the State of California do enact as follows:

SECTION 1. Section 1701.2 of the Public Utilities Code is amended to read:

1701.2. (a) If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo.

The scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case. The commission shall provide by rule for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The rule shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any interested party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds. The commission decision shall be based on the record developed by the assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(b) Notwithstanding Section 307, an officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case before the commission shall not participate in the decision of the case, or in the decision of any factually related adjudicatory proceeding, including participation in or advising the commission as to findings of fact, conclusions of law, or orders. An officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case may participate in reaching a settlement of the

case, but shall not participate in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a hearing closed pursuant to subdivision (d). The Legislature finds that the commission performs both prosecutorial and adjudicatory functions in an adjudication case and declares its intent that an officer, employee, or agent of the commission, including its attorneys, may perform only one of those functions in any adjudication case or factually related adjudicatory proceeding.

(c) Ex parte communications shall be prohibited in adjudication cases.

(d) Notwithstanding any other law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

(e) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted, the parties shall have an opportunity for final oral argument.

(f) (1) The commission may determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission.

(2) If the commission determines that a respondent lacks, or may lack, the ability to pay, the commission may order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution that may be ordered by the commission. The respondent shall demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within seven days of the commission commencing an adjudication case. The commission may delegate to the attorney to the commission the determination of whether a sufficient showing has been made by the respondent of an ability to pay.

(3) Within seven days of the commission's determination of the respondent's ability to pay potential penalties, fines, or restitution, the respondent shall be entitled to an impartial review by an administrative law judge of the sufficiency of the showing made by the respondent of the respondent's ability to pay. The review by an administrative law judge of the ability of the respondent to

pay shall become part of the record of the adjudication and is subject to the commission's consideration in its order resolving the adjudication case. The administrative law judge may enter temporary orders modifying any financial requirement made of the respondent pending the review by the administrative law judge.

(4) A respondent that is a public utility regulated under a rate of return or rate of margin regulatory structure or that has gross annual revenues of more than one hundred million dollars (\$100,000,000) generated within California is presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, therefore, paragraphs (1) to (3), inclusive, do not apply to that respondent.

Approved _____, 2014

Governor